

IN THE TENNESSEE REGULATORY AUTHORITY REC'D TN
NASHVILLE, TENNESSEE REGULATORY AUTH.

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IN RE:)
BELLSOUTH TELECOMMUNICATION'S)
TARIFF FILING TO REDUCE GROUPING)
RATES IN RATE GROUP 5 AND TO) DOCKET NO. 00-00041
IMPLEMENT A 3 PERCENT LATE)
PAYMENT CHARGE.)

OFFICE OF THE
EXECUTIVE SECRETARY

OBJECTION TO SEPTEMBER 1, 2000 NOTICE OF FILING OF EXECUTIVE SECRETARY
AND TO THE APPEARANCE OF VIOLATIONS OF THE PUBLIC MEETINGS ACT

Comes Tennessee consumers to respectfully object to the September 1, 2000 Notice of Filing of the Executive Secretary of the Tennessee Regulatory Authority. Tennessee consumers further contend that the grounds presented in the Notice of Filing are confusing and appear to constitute unlawful procedure. Tennessee consumers further object that the Notice of Filing appears to originate from a meeting which was not held in accordance with the Public Meetings Act. For cause Tennessee consumers would show:

1. That Executive Secretary of the Tennessee Regulatory Authority promulgated the notice attached as Exhibit "A" hereto and said notice is incorporated herein by reference.
2. That the notice asserts that the agency "unanimously voted to grant the Petition for Reconsideration and decided to consider the merits of the reconsideration at a later date."
3. That if the agency granted the Petition for Reconsideration it granted the Petition for Reconsideration on its merits.

4. That if the agency only intended to consider the merits of the Petition for Reconsideration at a later date, it apparently has not granted the Petition for Reconsideration and that said Petition for Reconsideration must be deemed denied as a matter of law.
5. That counsel for Tennessee consumers expressly sought to clear up that question at the August 29, 2000 Agenda Conference and understood that the Petition for Reconsideration had been granted and would not be reheard or reconsidered.
6. That if the agency intends to consider the "merits of the reconsideration" at a later date, it appears that Tennessee consumers have no alternative but to file a Petition for Review to protect their interests unless a written order clarifies the intent of the agency decision.
7. That additional confusion is caused by the agency decision to hold the Second Petition for Stay of Effectiveness in abeyance because a true grant of the Petition for Reconsideration would appear to make a Stay superfluous since the grant of the Petition should restore the state of the case to the state existing at the time of the Initial Order.
8. That the Notice asserts that the agency seeks assistance "in reviewing its Order of August 3, 2000" and that the arguments put forth in paragraphs 2-7 of this document also apply to this assertion.
9. That in addition to the arguments put forth in paragraphs 2-7, Tennessee consumers contend that if the Agency, upon granting the Petition for Reconsideration intends to review its Order of August 3, 2000, that said procedure is unlawful and is not in accord with the procedures of a Chancery Court.
10. That the grounds for reconsideration presented by Tennessee consumers would require a remand to complete discovery and then a hearing on the remaining issues.

11. That the record already exists as to the factual findings of the Hearing Officer and the legitimate conclusions regarding those findings.
12. That the record already exists that the Hearing Officer held that further proceedings to resolve discovery issues and for a hearing is warranted and that the Notice is in contravention of those decisions.
13. That if discovery is not completed then assertions of additional facts at this stage are not appropriate and that judgment on the remaining issues cannot be had.
14. That any other statement of facts would be disputed facts by their very nature and that these issues are not ripe for summary judgment.
15. That for the issues remaining, there are only those which are not impacted by the Initial Order of the Hearing Officer.
16. That the Notice infers that the agency did not hold a public meeting at which it issued the directive and that the agency should speak through its orders.
17. That Tennessee consumers object to any directive of the agency which does not occur in a public meeting as a violation of the Public Meetings Act and the Tennessee Constitution.
18. That without complete discovery it is impossible for Tennessee consumers to assert that any other facts are undisputed, including but not limited to the determination of whether BellSouth Billing is the real party in interest rather than BellSouth Telecommunications, Inc.
19. That if the agency considers any facts going to legal issues without complete discovery then it would violate the procedural and substantive due process rights of Tennessee consumers as said rights are set forth in the UAPA and Title 65.

20. That Mr. Turner on behalf of BellSouth argued at the July 11, 2000 hearing that:

The first thing I want to do is tell you what is good about this tariff and then I'm going to tell you why the initial order is wrong as a matter of law when it says that this is an increase in basic rates, ***because that's really the only issue that is on the table today.*** (Emphasis Added).

July 11, 2000 Hearing transcript at p. 123, lines 20-25. Copy attached as Exhibit "B".

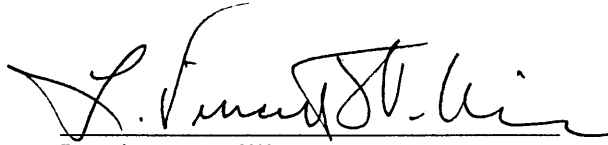
21. That despite BellSouth's admission that the entire case was not at issue, the majority, despite the dissent, went on to decide the entire case.
22. BellSouth's entire argument regarding the amended Initial Order itself is stated in pages 126-131 of the July 11, 2000 hearing transcript
23. That in its argument BellSouth does not address the Hearing Officer's findings of fact, which is supported by substantial and material evidence, *that the existing rates for basic local exchange services include provisions for late payment.* Indeed, BellSouth, by limiting its challenge to purely legal argument waives objections to and does not deny the Hearing Officer's factual premise.
24. That BellSouth never argued or explained why the General Assembly's express inclusion of recurring and nonrecurring charges into the definition of rates. Tenn. Code Ann. § 65-5-208 (a)(1).
25. That it is clear that Tenn. Code Ann. § 65-5-208 (a) has two (2) separate bundles of charges with rates. The first distinct bundle of charges with rates occurs in Tenn. Code Ann. § 65-5-208 (a)(1). The second bundle of charges with rates occurs in Tenn. Code Ann. § 65-5-208 (a)(2). As a result, it is clear that the charges associated with one classification of services should affect charges associated with another classification of

services. BellSouth admits that its tariff is intended to affect basic local exchange service charges.

26. That *BellSouth expressly concedes that its arguments are legal, and not factual*, therefore BellSouth has waived challenges to the Hearing Officer's factual findings and therefore the findings must be given credibility.
27. That the remainder of BellSouth's arguments were irrelevant and not on point and there are no legitimate grounds upon which the agency should have ruled reversed the Initial Order or found that the service was non-basic.
28. That Tenn. Code Ann. § 4-5-315 (a) provides for review of an initial order and the review provided for is a limited review.
29. That the Executive Secretary's directive violates Tenn. Code Ann. § 4-5-315 (a)'s limited review standards.
30. That the matters which should be set for rehearing are the Initial Order and whether it is supported by substantial and material evidence and the extent of an agency's review of an Initial Order.

Wherefore Tennessee consumers pray that the Tennessee Regulatory Authority hear Tennessee consumers objections to the Notice of Filing and proceed in the manner identified by Tennessee consumers.

Respectfully submitted,



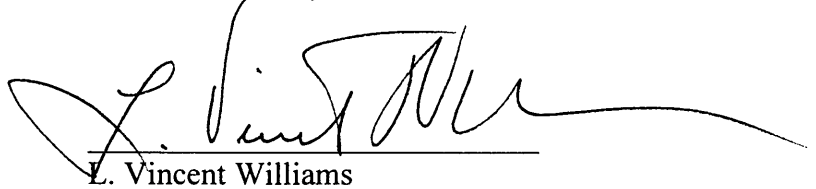
L. Vincent Williams
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Consumer Advocate Division
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Certificate of Service

I hereby certify that a true and correct copy of the foregoing Document has been faxed and mailed postage prepaid to the parties listed below this 8th day of September, 2000.

Guy Hicks, Esq.
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460 James Robertson Parkway
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L. Vincent Williams

TENNESSEE REGULATORY AUTHORITY

Sara Kyle, Chairman
Lynn Greer, Director
Melvin Malone, Director



460 James Robertson Parkway
Nashville, Tennessee 37243-0505

NOTICE OF FILING

IN RE: Tariff Filing of BellSouth Telecommunications, Inc. to Reduce Grouping Rates in Rate Group 5 and to Implement a 3% Late Payment Charge

DOCKET NO: 00-00041

DATE: September 1, 2000

On August 29, 2000, the Tennessee Regulatory Authority ("the Authority") considered the *Second Petition for Stay of Effectiveness and Petition for Reconsideration* filed by the Consumer Advocate on August 10, 2000 and all related filings. After reviewing the filings and hearing the parties' arguments, the Directors unanimously voted to grant the *Petition for Reconsideration* and decided to consider the merits of the reconsideration at a later date. A majority of the Directors then voted to hold the *Second Petition for Stay of Effectiveness* in abeyance.

As a result of these holdings and to assist the Authority in reviewing its Order of August 3, 2000, the Authority directs each party to file a list of each and every fact the party deems to be relevant to the two issues being reconsidered in this matter. The party shall identify the issue to which each fact pertains. The purpose of this request is to determine which facts are undisputed and to determine whether factual questions must be resolved before the Authority may resolve the legal issues presented by the two issues agreed to by the parties. Each party shall file its list of facts no later than 2:00 p.m. on Friday, September 8, 2000.

FOR THE TENNESSEE REGULATORY AUTHORITY

K. David Waddell, Executive Secretary

cc: Parties of Record

Original Notice in Docket File

Exhibit B

1 DIRECTOR GREER: -- are you --

2 MR. HOTVEDT: I'm prepared to. I
3 didn't know --

4 DIRECTOR GREER: Well, let's hear
5 your ruling on it and then maybe that will expedite
6 this process.

7 MR. HOTVEDT: This is in response to
8 General Williams' letter of July the 6th and our
9 conference call of that day, specifically on page 10
10 of my initial order, No. 1A.

11 And I may have been too brief in that
12 explanation, and I apologize to both parties in that
13 case. What I intended by that statement is the
14 following: The late payment charge as proposed in
15 this tariff is a telecommunications service for which
16 a charge is levied. Number one, the
17 telecommunications service component of the tariff is
18 BellSouth's provision to the subscriber the benefit of
19 paying the previous month's bill for the underlying
20 telecommunications services after the next billing
21 date without fear of immediate disconnection for which
22 a charge of 3 percent of the unpaid balance is added
23 to the subscriber's bill.

24 If this tariff is approved as filed,
25 one cannot subscribe to any telephone service without

1 being subject to it whether one utilizes this service
2 or not.

3 On June 6th, 1995, and when it became
4 subject to price regulation, BellSouth provided this
5 service/benefit to subscribers without adding
6 3 percent to the subscriber's bill.

7 Number two, the charge component of
8 the tariff is the 3 percent of the unpaid balance once
9 it is added to the bill. The late payment charge in
10 this tariff becomes a rate increase at the time the
11 3 percent charge is added to the bill because once
12 added, the rate of the underlying telecommunications
13 service increases by 3 percent.

14 Therefore, if the late payment charge
15 in this tariff were to be applied to, quote, basic
16 local exchange telephone services, unquote, it would
17 constitute an impermissible rate increase by violating
18 the four-year freeze in the price regulation statute.

19 Now, I will admit that that last
20 phrase takes my previous rulings to its logical
21 extreme. And I hadn't done that at this point. It
22 struck me that once I made those rulings, there were
23 some obvious inevitabilities about that. But that
24 would be for you-all to either uphold me or reverse
25 me, and then I think that conclusion is either obvious

1 or it's reversed.

2 DIRECTOR GREER: Is that whole thing
3 you just read 1A?

4 MR. HOTVEDT: Yes. That would be in
5 lieu of 1A. It actually I think explains other facets
6 of the order, but that is 1A.

7 DIRECTOR GREER: Have you got a copy
8 of that for us?

9 CHAIRMAN KYLE: Director Malone, do
10 you have a question?

11 DIRECTOR MALONE: I thought we ought
12 not entertain requesting a hearing officer to issue a
13 supplemental or amended initial order. The parties
14 don't have this language. Even if they get it in the
15 next five minutes, I mean, they don't have it to
16 consider. And I'm just wondering whether or not it
17 would be prudent to permit time to issue a supplement
18 order.

19 CHAIRMAN KYLE: I understood your
20 clarification. Mr. Turner, do you have a problem with
21 his clarification?

22 MR. TURNER: As I said previously
23 Chairman Kyle, we're going to oppose it. I'm ready to
24 argue that the ruling is simply wrong.

25 CHAIRMAN KYLE: Well, this is what I

1 came prepared for today. I think that we ought to go
2 ahead and consider the initial order, let each of
3 you-all argue 10, 15 minutes. We've all studied the
4 law, the policy, we've studied -- if there hadn't been
5 a previous law or a previous policy that addressed
6 this issue, we have thoroughly investigated this. We
7 have had ample time. Every time we get into any case,
8 we don't know whether it's going to lead to further
9 briefings or not. I'm ready to move forward today.
10 And if my fellow colleagues don't want to move
11 forward, then we'll stop. Otherwise, I've studied
12 this one about as hard as I studied any case.

13 DIRECTOR GREER: Mr. Williams, based
14 on what you've seen or heard, are you --

15 MR. WILLIAMS: I'm pretty certain
16 that I have no problem with it but, again, I haven't
17 read it. What I might recommend -- because I think
18 that once -- first of all, you've got to make an
19 amendment to the order. I think procedurally,
20 however, Director Malone is correct, that he has
21 procedurally amended the order, the initial order, for
22 you to consider the order. However, I think --

23 CHAIRMAN KYLE: He just clarified
24 that, General Williams. I thought that was a
25 clarification you asked for on the phone the other

1 day.

2 MR. WILLIAMS: It is. But I think
3 that Director Malone asked for an amendment.

4 As a practical matter, however, my
5 thoughts are if the Agency would pass this to the --
6 and hear the intervening matters and then come back to
7 this and let me finish reading it, because I may be
8 ready to have the argument today also.

9 CHAIRMAN KYLE: We have plenty of
10 time for you to stop and read that. I move that we
11 proceed with what was on the calendar today, that we
12 consider this initial order, have arguments, at least
13 10, 15 minutes on each side. If people haven't
14 studied and investigated this issue by now and they're
15 not prepared, I don't know when they're going to be
16 prepared on this issue.

17 Now, let me say this, I understand
18 from you, Mr. Hotvedt, that that Thursday call, a
19 question was put to you for clarification.

20 MR. HOTVEDT: Yes, ma'am.

21 CHAIRMAN KYLE: And you have done so
22 orally in court and you have handed out copies of that
23 clarification; is that correct?

24 MR. HOTVEDT: Yes.

25 CHAIRMAN KYLE: I just want to make

1 sure that I understand where we are. Well, I would
2 suggest that we move forward with the oral arguments
3 unless the Directors want to stop and put it off
4 again.

5 MR. WILLIAMS: My unreadiness is
6 cured. I've scanned it and I have no objections to
7 the order as amended, as modified, whatever.

8 CHAIRMAN KYLE: All right. I think
9 we ought to begin.

10 MR. TURNER: Thank you, Madam
11 Chairman. First, let me say that in the events
12 leading up to today, I worked with both Mr. Hotvedt
13 both as co-counsel on issues, as opposing counsel, as
14 more or less parties. I disagree with his ruling but
15 I do so with utmost respect. It's been a joy to work
16 with him on this issue and on the show cause as it was
17 with the staff. And I am obviously going to convince
18 you that he made a legal error, but I mean no
19 disrespect whatsoever in doing so.

20 The first thing I want to do is tell
21 you what is good about this tariff and then I'm going
22 to tell you why the initial order is wrong as a matter
23 of law when it says that this is an increase in basic
24 rates, because that's really the only issue that is on
25 the table today.

1 First, here's what's good about the
2 tariff, and there's a list of them. It lowers hunting
3 rates in rate group 5 is the competitive response.

4 Second, it does not affect the vast
5 majority of our customers. Customers who don't do
6 what we've all been told to do since we were in
7 kindergarten, and that is honor your commitments and
8 pay your bills on time, those customers are never
9 going to see the impact of this.

10 Those customers who right now are
11 impacted by it, who are not paying their bills on
12 time, they can remedy that. They can start paying on
13 time. That's all it takes and they will never see the
14 impact of this charge.

15 There are some customers that
16 BellSouth has who are low income customers, and we
17 have programs that are in effect right now that
18 benefit those customers. Lifeline and Link-up provide
19 services at very, very low rates.

20 In addition to that, we have spoken
21 in our briefs about the credit challenge initiative
22 that allows customers whose service has been
23 temporarily suspended for nonpayment to work out
24 arrangements to pay that bill over the course of 12
25 months. So even when people run into some hard times,

1 we have programs in place that allow us to work with
2 them.

3 Fifth, and this may be one of the
4 most important good things about this tariff, we could
5 have sat down and said, you know, this is costing us
6 X-amount of money on these late payments, so let's
7 just raise a nonbasic rate over here. We'll raise a
8 residential nonbasic rate and business nonbasic rate
9 and make it up. It would never hit the issues list.

10 This provides benefits to all
11 customers who are hunting. They get those rate
12 reductions in rate group 5, and it will generate
13 revenue for BellSouth only if everyone -- it will
14 generate the corresponding revenue for BellSouth only
15 if everyone who today does not pay their bills on time
16 continues not to pay their bills on time. If this has
17 the effect we intend for it to have and people start
18 paying their bills on time, we will have lowered
19 rates, we will get no revenue from it, and we would
20 have used up headroom in the price regulation filing.
21 So this is good thing.

22 Our filing also responds to the
23 concerns that the Consumer Advocate raise in the first
24 late payment filing. The first concern was that
25 agencies of the state of Tennessee were exempt. We

1 have modified that in this filing. They now have to
2 pay the late payment charge as provided in state
3 statutes.

4 And, secondly, the Consumer Advocate
5 Division argued that you didn't have any offsetting
6 revenue reduction. Well, yes, we do now. We've used
7 offsetting revenue reductions on a small amount of
8 headroom.

9 And, finally, this is not something
10 novel or new. Regulated companies throughout the
11 state of Tennessee charge late payment charges, a lot
12 of them charge 5 percent. This is a bridge that's
13 been crossed before and it's nothing new.

14 Here's what's wrong with the initial
15 order. The gist of the initial order when you get
16 right down to it is this, it says that late payment
17 charge is so intertwined and inextricably linked to a
18 basic service when you apply it to the basic service,
19 that the charge itself becomes a basic service.

20 Here is why that's wrong. The
21 statute doesn't say basic services are these services
22 and services that are associated with them. It
23 doesn't say it includes these services and some others
24 that we didn't already list. It says if it meets
25 these attributes, it's basic. And if it doesn't meet

1 the attributes, it's not basic.

2 Now, this amendment said that the
3 service that's being provided is the benefit of paying
4 the previous month's bill after the next billing date.
5 That's got nothing to do with an access line, it's got
6 nothing to do with dial tone, it's got nothing to do
7 with anything. It's a basic service. That same
8 service might be provided by a dentist's office, by a
9 shoe seller or any other company. It's not a
10 telecommunications service at all. But beyond that,
11 here's why the inextricably intertwined argument is
12 wrong. At home, I have a 1FR; I have a basic
13 residential line. I also have MemoryCall. Now, I
14 think if you take this inextricably intertwined
15 language, MemoryCall is inextricably intertwined with
16 that basic rate or that basic line because I can't use
17 MemoryCall if I don't have that basic line. But
18 MemoryCall is not a basic service. It's nonbasic. So
19 that is one reason that the order is wrong.

20 Here's another reason the order is
21 wrong. It's inconsistent with prior orders of the
22 TRA. There's an example in which Mr. Smith in the
23 initial order always pays his bill late, only buys
24 basic service. And the argument is, well, he's paying
25 more money after you implement the charge than he did

1 before.

2 Let's go back to the five-line
3 tariff. You have ISPs who do not have a business
4 listing in the directory and they were paying
5 residential rates on however many lines they had at a
6 location. As a result of the ruling in the five-line
7 docket, for all but five of those lines, with some
8 exceptions, but basically for all but five of those
9 lines, after the ruling, they started paying higher
10 rates; instead of paying the residential rate, they
11 paid the business rate.

12 Now, this same Mr. Smith analysis
13 would apply in that docket. Day one they were paying
14 this amount, day two, the exact same services, they're
15 paying this amount. But the Authority properly ruled
16 that was not an increase in basic rates because basic
17 residential rates remain exactly the same and basic
18 business rates remain exactly the same.

19 That same logic applies here.
20 Mr. Smith is going to be billed after the
21 implementation the exact same \$12.15 for his local
22 service. He only gets the late payment charge if he
23 doesn't pay on time. And that leads to my third point
24 of what is wrong with the initial order.

25 The order states that the late

1 payment charge has to be a basic service charge when
2 applied to basic because it's derived from and then
3 applied as a charge to basic services. Well, it's not
4 derived from basic services. It's derived from costs
5 that we incur when we have to administer and track
6 these late payments.

7 Now, let's assume that no customer
8 ever paid a bill late. Those costs would not be in
9 existence. They're not based on the services we
10 provide, they're based on costs that we incur solely
11 because after having provided and billed for those
12 services, we still have to go back and have systems
13 that keep up with it, we still have to write letters,
14 we have to employ collection folks. So it's based on
15 cost that is created by customers who don't pay on
16 time, it's not based on a telecommunication service.

17 I think BellSouth could come in and
18 say here is the cost, here are the number of
19 customers, we'll apply a flat rate. I think that
20 would have been perfectly appropriate. Now, in that
21 case, there won't have been any application to a
22 telecommunication service. If you pay late, that's a
23 flat amount that everyone would have to pay. I don't
24 think the fact that we decided to do it as a
25 percentage of a bill converts that into becoming a

1 basic service.

2 I mean, a couple reasons we did it
3 that come to mind is, number one, it's standard
4 business practice. Most of the time you see a
5 percentage of the bill is what you pay a late payment
6 on, especially in the regulated industries in
7 Tennessee. And, secondly, we just think it makes more
8 sense to do it that way instead of having, you know, a
9 guy who is late on a 12/15 bill paying the exact same
10 as a guy who's late on a \$3,000 business bill. We
11 thought it made sense and was more in line with
12 business practices to do it as a percentage.

13 So when you get right down to it,
14 this is not a basic service. And don't forget, the
15 statute defines basic service -- in order to be a
16 basic service on the statute, it's got to be a
17 telecommunication service first. I don't think this
18 is a telecommunication service.

19 As defined in the order itself, the
20 service you get is not having to pay on time
21 basically. It's not a telecom service. Even if it
22 was, it's not a charge for a basic local service.
23 That ruling is inconsistent with prior Authority
24 decisions, it's inconsistent with the words of the
25 statute, there's nothing in that statute that says

1 things that are associated or intertwined with basic
2 are basic.

3 And what the statute says is if we
4 are under the aggregate revenue, ceiling we are
5 allowed to implement this charge. And we are under
6 the ceiling. We have filed the necessary
7 documentation to show that when you take out the rate
8 reductions and use head room, we are under that
9 ceiling. And that's the sole issue in a price
10 regulation filing.

11 The hearing officer was right when he
12 said that this idea that is built into the rates from
13 the '93 case is irrelevant. If you were to take that
14 tact that everything was considered in theory in the
15 1993 case and you never raise a rate today unless you
16 went back and saw it was already attributed to a
17 service today. That's not what a price regulation
18 statute is saying. So that part of the order is
19 exactly right.

20 We appreciate the time. We urge you
21 to reverse this ruling. Find that this is a nonbasic
22 service or nonbasic rate and approve this tariff.
23 Thank you.

24 CHAIRMAN KYLE: Thank you,
25 Mr. Turner. Do the Directors have questions for

1 Mr. Turner or do you want to hear from General
2 Williams first? General.

3 MR. WILLIAMS: The hearing officer's
4 order as modified, the Consumer Advocate agrees with.
5 We would not use the exact language that the hearing
6 officer used, but we would agree with it in its
7 entirety, the outcome in its entirety. We would have
8 thought that the order would have been better
9 predicated based on 65-5-208(a)(1) wherein the last
10 part of that basic service statute says rates include
11 recurring and nonrecurring charges. Rates for these
12 services, all the services that are in the basic
13 service package, includes recurring and nonrecurring
14 charges.

15 The hearing officer has essentially
16 found that one of the recurring and nonrecurring
17 charges of local basic exchange service, not
18 MemoryCall, makes the argument that local basic
19 exchange service included the late payment charge
20 amounts, and on June 6th, 1995. So I don't think
21 there can be any doubt, and BellSouth has not made any
22 arguments that it did not include those amounts on
23 June 6th, 1995. So the hearing officer's order is
24 absolutely correct.

25 The ISP case is not applicable. In

1 that case, what the Authority did was arrive at a
2 presumption that more than five lines are business
3 service and that if the customer came in and said
4 these are actually residential services, then they
5 could have as many lines as they want whether it was
6 five or ten or ten or fifteen lines that they could
7 have, if they showed it was a residential use that
8 they could have as many lines as they want. So it is
9 not the same thing.

10 So the MemoryCall analogy, the ISP
11 analogy, none of those work. It is clear that it is a
12 recurring charge for service, recurring or
13 nonrecurring charge for service. It's a recurring and
14 nonrecurring charge because it costs more for
15 BellSouth to provide services to some customers than
16 it does others and so that amount is essentially
17 averaged in the charge. And that's why it's a part of
18 the service. It costs more to serve some customers
19 than it does others, and that is essentially it.

20 If it were a discount it would be --
21 if it was a discount for the service, it would still
22 be the charge, recurring or nonrecurring charge at the
23 discount.

24 And so what we have here just happens
25 to be a greater -- if we had a prepayment discount,

1 for example, which we suggested, if BellSouth wants to
2 charge a late charge, let them give people prepayment
3 discounts. If it would have been a prepayment
4 discount it still would have been a charge for the
5 service provided but they would be paying it sooner.
6 The prepayment charge for the service but it's
7 received sooner by the company and so they get a
8 prepayment discount.

9 For those persons who didn't want to
10 prepay, they would pay the assigned rate and then you
11 would have the late charge. Right now it's one rate.
12 They don't get a discounted rate, they don't get a
13 late payment rate. It's one rate that takes into
14 consideration the prepayments that people make and
15 also the late payments that people make. So the order
16 is essentially clear.

17 The Authority that he uses, that
18 BellSouth uses, are just not applicable and there's
19 no -- and so in all material respects, the order, the
20 outcome of the order, is exactly what would be
21 required by 65-5-208.

22 He says that late charges are not --
23 they say that late charges are not there because all
24 it applies to is telecommunication services. Well,
25 educational discounts are not themselves services. So

1 it clearly applies to more than just somebody picking
2 up the phone and dialing. And so the discounts
3 themselves, then there would be no way that you could
4 even do the discounts because that discount itself is
5 not a service.

6 So it's clear that BellSouth has not
7 presented any argument. We even asked a question in
8 interrogatories, one of the objections that we have
9 had was interrogatories. We asked BellSouth to
10 explain each and every reason why -- how that the late
11 charge payment itself could be a telecommunication.
12 They raised none.

13 The hearing officer certainly was
14 free to take the absence of discovery on that issue
15 and deal with it as he thought, and also to take a
16 look at the applicable law, the prior history, and
17 arrive at an agreement that makes sense.

18 And so I think he's presented an
19 agreement that makes sense. It is, again, is not
20 articulated like we might articulate it, but from a
21 material standpoint, in all material respects, the
22 order we think should be upheld.

23 CHAIRMAN KYLE: General Williams,
24 Mr. Turner had raised the issues Attorney General Paul
25 Summers may have had. And I did not hear the news

1 reports that General Summers held concerning that it
2 was a 5 percent late charge. My understanding is that
3 Mr. Turner feels like BellSouth has addressed those
4 concerns. You look puzzled. You're not aware of it.
5 And in all due respect, I just want to know, have they
6 addressed those particular concerns in your opinion?

7 MR. WILLIAMS: No.

8 CHAIRMAN KYLE: Not at all?

9 MR. WILLIAMS: No. Because they're
10 still recurring and nonrecurring charges including
11 local basic exchange services.

12 We are not objecting -- and the
13 hearing officer did not hold that for nonbasic
14 services that BellSouth could not implement a late
15 charge. And it's not part of the order and the
16 Attorney General has not taken that position. But for
17 local basic exchange services, we still have that
18 problem whether it's 3 percent or 5 percent or
19 1 percent. And we also have remaining issues that are
20 not part of this.

21 CHAIRMAN KYLE: Mr. Turner, let me
22 ask you, you mentioned you had programs for people
23 who -- I don't really know the situations -- may have
24 lost their job and they can get on a payment schedule.
25 What did you say to Lifeline customers? Would they

1 also be included in these late payment charges under
2 your request?

3 MR. TURNER: As the tariff is
4 written, yes, ma'am. But no one has raised that issue
5 before.

6 CHAIRMAN KYLE: We may later on. I
7 just wanted to make sure I have my ducks in a row. Do
8 the Directors have questions? Do the Directors have a
9 motion?

10 DIRECTOR GREER: I spent a lot of
11 time on this. This has been sort of a frustrating
12 issue because being a layman and not a lawyer, as I've
13 said to you before, there are a lot of issues that
14 come before us that give me a little problem.

15 On the issue of whether or not a late
16 payment charge constitutes a telecommunication
17 service, I really struggle. There is no definition in
18 the TCA of a telecommunication service. It is stated,
19 however, that for a service to be classified as basic
20 or nonbasic, it must be first a telecommunication
21 service. From a layman standpoint, I don't think that
22 I'll ever personally accept the fact that a charge for
23 a late payment is a telecommunication service. That's
24 a personal comment.

25 BellSouth has voluntarily reduced its

1 hunting rates in rate group 5 and uses accumulated
2 head room to make these reductions. Any alleged
3 violation of the aggregate revenue cap becomes moot in
4 this tariff filing because BellSouth does not violate
5 its aggregate revenue cap.

6 BellSouth argues that its tariff
7 filing is not a telecommunication service but if it is
8 BellSouth claims that it would fall into the nonbasic
9 category and thus does not require a rate reduction.
10 The Consumer Advocate and the hearing officer argue
11 the opposite position.

12 Let me state, however, that UTSE
13 applies a 1 1/2 percent late fee to all services
14 contained in its GSST. UTSE also applies a late
15 charge to access services.

16 In its previous filings, the TRA has
17 allowed UTSE to place the revenues resulting from late
18 payments in the nonbasic category. This
19 classification of revenues has not been contested in
20 previous price cap filings.

21 In my opinion, a late charge is an
22 avoidable or an optional charge. The consumer does
23 not ever have to pay it. As BellSouth points out in
24 its filing, the TRA allows a charge for late payments
25 or discounts on timely payments not only for rate of

1 return utilities and CLECs but also for UTSE, a price
2 cap local exchange company. BellSouth's proposal is
3 consistent with these existing practices.

4 Therefore, I would like to move that
5 the late payment as a nonbasic service, that the TRA
6 has the authority to approve BellSouth's late payment
7 charge even if the charge will apply to the services
8 by third parties, and that the additional order be
9 rejected and that the tariff filing be approved thus
10 rendering the CAD's filings and motions moot.

11 Director Kyle, you brought up a valid
12 point. And if you're going to amend my motion to
13 include Lifeline, I would consider that a friendly
14 motion.

15 CHAIRMAN KYLE: Well, I really
16 appreciate it. Mr. Turner, I want you to comment on
17 that. Would you be willing to accept Lifeline,
18 exempting Lifeline customers?

19 MR. TURNER: Yes, ma'am, we will
20 exempt Lifeline and Link-up.

21 CHAIRMAN KYLE: Let me ask you this
22 because I don't know the magnitude. Most people pay
23 their bills on time, but there's several that do not.
24 Walk me through this scenario. Say there's 1,000
25 customers out there that do not pay their bill on

1 time. That's a lot of money that you don't have in
2 the bank, that you do not get the benefit of. But you
3 are carrying those same thousand customers on the
4 books; is that correct? That you're still having to
5 carry their -- the names, the amounts, their account
6 information, you're still paying for that?

7 MR. TURNER: Yes.

8 CHAIRMAN KYLE: And then people say
9 it's everyone in this room, all of us in here, we're
10 all public, we all pay our bills on time. Were you
11 insinuating that sooner or later our bills are going
12 to go up because we pay on time?

13 MR. TURNER: I was saying that if we
14 did not do it this way, I think effectively that's
15 exactly what could happen. If we decided that there
16 is a cost out here that we are incurring and we
17 implemented a rate increase across the board, that is,
18 in effect, what's happening. This way only the
19 customers that are causing those costs to be incurred
20 are paying those costs. And if they all stop causing
21 the cost to be incurred, there's no charge.

22 CHAIRMAN KYLE: Well, I think
23 customers who pay their bills on time should not run
24 the risk of being penalized, as Director Greer has
25 pointed out. Also, I don't want to face the

1 possibility down the line that my children who are
2 getting ready to get out in the working world,
3 college, have to pay higher bills because mom and dad
4 are sitting back home not paying their bill on time.

5 Let me just bring out too, Black's
6 Law Dictionary, I got very interested in terms that
7 are used on late payments, late charges. I even went
8 through finance charges, penalties. And I finally
9 came down on the characterization in this particular
10 case of delinquency charges. And it says, and there's
11 a case reference, failure to make payments in a timely
12 manner. That's basically what a delinquent charge is.

13 Therefore, if we properly
14 characterize what we're facing today as not being a
15 telecommunication service, what extra am I getting?
16 Am I getting more service? I don't believe so. I
17 believe that it's a delinquent charge that I'm having
18 to pay you because I didn't get my bill in on time.
19 Maybe I was on vacation and forgot to, but I'm not
20 doing that every time, all the time. But I don't want
21 to end up carrying other customers who make a practice
22 of not paying on time.

23 I would be in agreement with
24 Director Greer, and if you will -- and I believe
25 you've agreed to take Lifeline customers out of it.

1 And while we're waiting for Director Malone to come
2 back, I'm trying to think if there's any -- the
3 elderly population, those who have moved in with their
4 parents, I believe you agreed to that at one time to
5 give them any breaks that came down the pike. If I
6 move my mother in with me to live, I think you took
7 care of that on the DA charges. I want to sit here
8 and think about it and see if there's any way we
9 can -- you can help out that end of the population.

10 DIRECTOR GREER: Director Kyle, while
11 he's thinking about that, I will amend my motion to
12 include Lifeline and Link-up customers as exempted
13 from the 3 percent late charge.

14 CHAIRMAN KYLE: Thank you. I'm in
15 agreement with you. I vote yes. Director Malone.

16 DIRECTOR MALONE: On the state of the
17 record at this particular time, I'm going to vote no.

18 CHAIRMAN KYLE: General Williams, I
19 want to ask Mr. Turner one more thing. Mr. Turner,
20 you know, we have a lot of elderly population that
21 live from check to check and pensions, retirements,
22 and benefits, do you see that as a pattern at your
23 office that those people, are they paying their bills
24 pretty much on time? You may not know that answer.

25 MR. TURNER: I don't know. But

1 Item No. 4 in our request for production that's on
2 file in this docket has a list of folks with balances
3 of their bill and the number of accounts that are past
4 due. And it looks like really there's an increase
5 pretty much in the amount owed and the number of
6 people who have late balances. So based on this
7 information in the record, it certainly doesn't appear
8 that more people who are not able to afford a lot of
9 services are paying late, it seems like the ones who
10 are buying an awful lot of service are the ones paying
11 late.

12 CHAIRMAN KYLE: I was just interested
13 in that pattern. Thank you very much. I think it was
14 a 2 to 1 vote. So, General Williams, do you have a
15 final comment?

16 MR. WILLIAMS: May I respectfully
17 object. We were here to hear the initial order.
18 We've been here before when the Consumer Advocate
19 objected to not being able to take sufficient
20 discovery on the other issues. The majority has went
21 beyond a hearing without notice, without anything.
22 Went beyond the hearing of the additional order to
23 resolve other aspects in the case. We think that it
24 denies due process. We were here to argue the initial
25 order. We haven't had the full discovery as Director

1 Malone on the record, haven't had the completed
2 discovery and the Authority has done that. So we
3 respectfully object.

4 And we would add as an aside, that
5 you are already subsidizing your existing rates for
6 basic services even when you pay on time, will
7 continue to -- if it was providing a subsidiary
8 before, it continues to provide that same subsidy
9 whether or not you add the late charge.

10 So the rationale of the late payment
11 charge when there's no offsetting discount for early
12 payers does not take into consideration the early
13 payers.

14 CHAIRMAN KYLE: General, let me just
15 stop right there because we have some other cases to
16 hear, and Director Malone has the courtroom to hold
17 another hearing. We so noted your comment. And for
18 the record, again, on April 11th, the Authority
19 conference -- well, there was a first prehearing
20 conference. At that time you submitted two such
21 issues, and then the prehearing officer ruled on
22 various discovery motions and motions to compel. Then
23 again I believe on May the 18th you submitted
24 approximately five subissues and so on, so on. So you
25 did have the opportunity and I just wanted that to be

1 so noted in the record.

2 I believe now that we're ready for
3 Item No. 7.

4 MR. WADDELL: Docket No. 00-00409,
5 AT&T Communications of the South Central States,
6 tariff to revise the late payment charge language.

7 DIRECTOR GREER: Move to approve.

8 CHAIRMAN KYLE: Director Malone, do
9 you have any comments?

10 DIRECTOR MALONE: My comments would
11 be consistent with the previous item that on the state
12 of the record, without additional information, I would
13 not support the motion.

14 CHAIRMAN KYLE: I would just say that
15 we already have approved this 1.5 percent. The three
16 of us did that in 1998. This is asking, I believe,
17 for the \$5 minimum. And I will vote yes.

18 DIRECTOR MALONE: Let me just state
19 to not have my previous vote construed inconsistent
20 with this one. I think the two matters are
21 distinguishable.

22 CHAIRMAN KYLE: The two matters are
23 distinguishable. Let me make sure about that date. I
24 want to get it right on the record when we voted on
25 that. I believe it was -- yes. It became effective

1 on September 11th, '98. And I believe we approved it
2 September 11th, '98. And I stand to be corrected if
3 that's not right. All right. Number 8.

4 MR. WADDELL: 00-00412, AT&T
5 Communications of the South Central States, tariff to
6 introduce late payment charge language to custom
7 network services tariff.

8 DIRECTOR GREER: Move to approve.

9 CHAIRMAN KYLE: I would vote yes.

10 DIRECTOR MALONE: Vote no.

11 MR. WADDELL: The next item is
12 00-00454, Sprint Communications Company, LP, tariff to
13 introduce a 1 1/2 percent late fee for business
14 customers.

15 DIRECTOR GREER: Move to approve.

16 CHAIRMAN KYLE: Vote yes.

17 DIRECTOR MALONE: On the state of the
18 record, I vote no.

19 CHAIRMAN KYLE: Does that conclude?

20 MR. WADDELL: That's all the items I
21 have.

22 CHAIRMAN KYLE: Thank you very much.
23 Court is adjourned.

24 (Proceedings concluded at
25 12:30 p.m.)

REPORTER'S CERTIFICATE

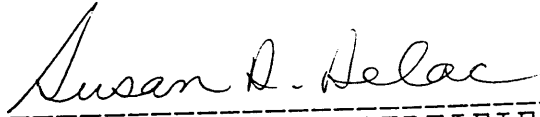
STATE OF TENNESSEE)

COUNTY OF DAVIDSON)

I, Susan D. Delac, Certified Court Reporter, with offices in Nashville, Tennessee, hereby certify that I reported the foregoing proceedings at the time and place set forth in the caption thereof; that the proceedings were stenographically reported by me; and that the foregoing proceedings constitute a true and correct transcript of said proceedings to the best of my ability.

I FURTHER CERTIFY that I am not related to any of the parties named herein, nor their counsel, and have no interest, financial or otherwise, in the outcome or events of this action.

IN WITNESS WHEREOF, I have hereunto affixed my official signature and seal of office this 17th day of July, 2000.


SUSAN D. DELAC, CERTIFIED
COURT REPORTER AND NOTARY
PUBLIC FOR THE STATE OF
TENNESSEE AT LARGE

My Commission Expires:

May 28, 2004